

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8410 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be
1 allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the
3 fair copy of the judgment ?

4 Whether this case involves a substantial
4 question of law as to the interpretation of
the constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to the
5 civil judge ?

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V D SHAH - Petitioner(s)
Versus
NEMAJI MOTIJI THAKORE - Respondent(s)

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Appearance :

MR RC JANI for Petitioner No(s).: 1.

MR DS VASAVADA for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 04/07/2005

ORAL JUDGMENT

1.0 The petitioner Board has challenged the order dated
18.05.1999 passed by the Labour Court, Palanpur in

Reference (LCP) No.46 of 1996, whereby the said reference was allowed.

2.0 The respondent herein was working as a Lineman with the petitioner Board. It is the case of the petitioner that on 01.05.1986, the respondent was transferred to another Division of the petitioner Board, but, he had refused to obey the said order of transfer. Ultimately, the respondent was dismissed from the service.

2.1 Feeling aggrieved by the said action, the respondent raised industrial dispute, which ultimately came to be referred to be Labour Court, Palanpur, by way of a reference. The Labour Court, Palanpur, by impugned order, allowed the said reference. Hence, this petition.

3.0 Mr. R C Jani learned advocate for the petitioner has contended that the respondent workman was transferred to another Division of the petitioner Board, but, had voluntarily abandoned the duty. He has submitted that from the record it is clear that the respondent workman has not completed 240 days of service, and therefore, there was no breach of the provisions of Section 25(F) of the Industrial Disputes Act, 1947. He has, therefore, submitted that the Labour Court has committed grave error in granting reinstatement with continuity of service and back wages to the respondent workman.

4.0 Mr. D S Vasavada learned advocate for the respondent has contended that the petitioner Board while presenting its case before the Labour Court, had not raised any contention as regards the transfer of the respondent to its another Division. The said contention was raised for the

first time when the witness had come for cross-examination.

4.1 Mr. Vasavada has further submitted that assuming even if 240 days of service in a year was not completed by the respondent, but, since the respondent had worked for six months, he had completed 120 days of service. He has, therefore, submitted that even if there is no breach of the provisions of Section 25(F), the petitioner Board has not followed the provisions of Sections 25(G) & 25(H) of the Industrial Disputes Act, 1947. Hence, the impugned order of the Labour Court is just and proper and requires no interference from this Court in this petition.

5.0 I have heard learned counsel for the parties and perused the documents placed on record. It is to be noted that the contention regarding transfer was not raised before the Labour Court. Assuming even if the respondent workman had not resumed the duty, then also the petitioner Board was required to issue Notice to the respondent before relieving him from the duty. There is nothing on record to show that such documents were placed before the Labour Court for consideration. Hence, this Court is not inclined to accept the theory of transfer put forward by the learned advocate for the petitioner.

5.1 So far as the contention regarding breach of Section 25(F) of the Industrial Disputes Act, 1947 is concerned, it is required to be noted that the respondent has worked for six months continuously and has thereby completed 120 days of service. Subsequently, other persons were also employed. In that view of the matter, even if it is considered to be "retrenchment", then also the petitioner Board ought to have called the respondent and given him work in the post

in which he was working.

5.2 Keeping in mind the over all evidence on record and the basic principle of labour jurisprudence, the respondent workman is required to be granted the benefit of Section 25(F) of the Industrial Disputes Act, 1947. I am in complete agreement with the reasonings given by the Labour Court in its impugned order qua reinstatement with continuity in service.

5.3 However, so far as the order qua grant of back wages is concerned, the Labour Court has not given cogent reasons for awarding the same. Moreover, in view of the principle laid down by the Apex Court that a workman shall be entitled for back wages only if he has worked for the interim period, the respondent herein cannot be said to be entitled for back wages. In that view of the matter, the impugned order of the Labour Court is required to be modified qua grant of back wages.

6.0 For the foregoing reasons, this petition is partly allowed. The impugned award of the Labour Court, Palanpur passed in Reference (LCP) No. 46 of 1996, qua reinstatement with continuity in service is confirmed and qua granting back wages to the respondent workman is quashed and set aside. The petitioner Board is directed to implement the order of the Labour Court qua reinstatement with continuity in service from the date of publication of the award within a period of three months from the receipt of writ of this order. The difference of pay, if any, and the benefits under Section 17(B) of Industrial Disputes Act, 1947 shall be paid to the respondent workman within a period of six months thereafter. The petition stands disposed of

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accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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